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OFFICE OF PETITIONS

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2100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20037-3213

In re Application of :
Bennai, et al. :
Application No. 09/736,298 : DECISION DISMISSING
Filed: December 15, 2000 : PETITION UNDER 37 CFR
Attorney Docket No.: Q62303 : 1.47(a)
For: COMMUNICATION METHOD USING ONE:
ACCESS :

This is in response to the renewed petition under 37 CFR 1.47(a),
filed April 8, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of
this decision to reply, correcting the below-noted deficiencies.
Any reply should be entitled "Request for Reconsideration of
Petition Under 37 CFR 1.47(a)," and should only address the
deficiencies noted below, except that the reply may include an
oath or declaration executed by the non-signing inventor. Failure
to respond will result in abandonment of the application. Any
extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed December 15, 2000
without an executed oath or declaration and naming Lahcen Bennai
and Christian Laroque as joint inventors. Accordingly, on
February 16, 2001, a "Notice to File Missing Parts of
Nonprovisional Application" was mailed, requiring an executed
oath or declaration and surcharge for its late filing and a
verified English translation of the application and required fee.
The instant petition was filed in response. A petition under 37
CFR 1.47(a) was filed August 16, 2001 and dismissed September 7,
2001.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof
that the non-signing inventor cannot be reached or refuses to
sign the oath or declaration after having been presented with the
application papers (specification, claims and drawings); (2) an
acceptable oath or declaration in compliance with 35 U.S.C. §§
115 and 116; (3) the petition fee; and (4) a statement of the
last known address of the non-signing inventor.

Petitioner lacks item (1) set forth above. The petition lacks
supporting evidence that the non-signing inventor cannot be
reached, was ever presented with a copy of the application papers
(specification, claims and drawings), or, having been presented
with the application papers, refused to sign the oath or
declaration.

The original petition stated the non-signing inventor could not
be located. Petitioner provided no evidence of efforts to locate

the non-signing inventor. Accordingly, the petition was dismissed.

The instant renewed petition states the inventor refused to execute the declaration.

To the extent petitioner alleges the non-signing inventor cannot be located, petitioner is required to undertake diligent effort to locate the inventor. Where inability to find or locate a named inventor(s) is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. The statement(s) of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay, will not normally be accepted. At the very least, a search of the internet, telephone directories, and international registries should be undertaken in regions where it is suspected the non-signing inventor may reside. Petitioner should reference and supply evidence of any such searches in a renewed petition. See, MPEP 409.03(d).

To the extent petitioner alleges the inventor refuses to sign the declaration, petitioner is reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that *bona fide* effort has been made to present a copy of the application papers (**specification, claims, drawings, and oath or declaration**) to the non-signing inventor. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney. See, MPEP 409.03(d).

Petitioner has not established that effort has been made to present a copy of the application papers (specification, claims, drawings, and oath or declaration) to the inventor. The evidence submitted by petitioner establishes that an assignment and declaration were mailed to the inventor and that the package containing these items was returned by the postal service.

Any renewed petition must be accompanied by evidence that despite diligent effort, the non-signing inventor cannot be located, or, petitioner must establish that the inventor, after having been presented with the application papers, refused to execute the oath or declaration.

Lastly, a reply to the dismissal mailed September 7, 2001 was due on or before November 7, 2001. As the instant renewed petition was not received until April 8, 2002, petitioner requires a five (5) month extension of time. A petition for a four (4) month extension of time accompanied the instant petition. The amount due, \$520.00, has been charged to deposit account No. 19-4880 as authorized in the instant renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

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By FAX: (703) 308-6916
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may be directed to
the undersigned at (703) 305-0310.



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for Patent Examination Policy